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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-08-2005

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE N. KANNADASAN

L.P.A.NO.18 OF 2004
and
C.M.P.Nos.9499 of 2005 & 12506 of 2004

S. Arumuganainar
Senior Manager Transport (South)
Bharath Petroleum Corporation Ltd.,
1, Ranganathan Gardens,
Off: 11th Main Road
Post Bag No.1212 and 1213,
Anna Nagar, Chennai 40. .. Appellant/Respondent

Vs.

M/s. Jeenath Roadways
32A, Officers Colony,
2nd Street, Mehta Nagar,
Chennai 29.
Represented by its Proprietor .. Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent against the order dated 29.6.2004 in Contempt Petition No.53 of 2004 passed by the learned single Judge.

For Appellant : Mr.K. Ethiraj
For Respondent : Mr.N.G.R. Prasad
for Mr.S. Vijayakumar

- - -

J U D G M E N T

P.K. MISRA, J

Though the matter was listed for considering the question of stay/vacating the stay, since the very same question is involved in deciding the appeal, on consent of the counsels, the entire appeal has been heard on merit and is being disposed of by the present judgment.

2. The facts giving rise to the present appeal are as follows :-

The present appellant awarded contract to the present respondent for a period of two years in respect of three tank lorries with effect from

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1.9.2000 and for six tank lorries with effect from 1.11.2000, which provides extension for another year on the same terms and conditions. Dictating some serious violations in respect of two of the tank lorries, two show cause notices were issued on 31.5.2003. Under the show cause notices, it was intimated "... We are suspending all your tank lorries which are in contract with BPCL with immediate effect". A reply was furnished by the respondent claiming that malpractice had been committed by the concerned driver without the knowledge and connivance of the respondent. Two writ petitions, namely, W.P.No.17962 and 17966 of 2003 were filed challenging such order of suspension and interim orders were passed on 30.6.2003 staying the operation of such suspension order in respect of seven lorries relating to which no malpractice had been detected. On 20.6.2003, an order blacklisting the tank lorries was issued. The operative portion was to the following effect :-

> "We are therefore, blacklisting your ten tank lorries, which are in contact with BHARAT PETROLEUM CORPORTION i.e. including the seven tank lorries, which are in contract at Tondiarpet Installation along with the crew with immediate effect including ex-MI loads on industry basis as per industry guidelines on transport discipline July 1998."

A counter affidavit in the two writ petitions was filed on 22.7.2003 justifying the order of suspension. In such counter affidavit the subsequent order of blacklisting was also indicated.

While the writ petitions were pending, the present respondent filed petition under Section 9 of the Arbitration and Conciliation Act, 1996, numbered as O.A.No.724 of 2003 and an order of stay was passed on 5.9.2003 staying the operation of the order dated 20.6.2003 except with regard to two tank lorries involved in the malpractice.

While considering the miscellaneous petitions, both the writ petitions were taken up for hearing with the consent of the counsels appearing for the parties and by common order dated 16.9.2003, both the writ petitions were dismissed. Thereafter, the present respondent filed W.A.Nos.3797 & 3798 of 2003 on 28.10.2003. By the time the writ appeals were taken up, the respondent had also filed O.P.No.708 of 2003 for appointment of an arbitrator. Noticing all these developments, the Division Bench observed:-

> "4. In view of the fact that the contract period has itself ended and now, the controversy is limited to action of blacklisting both the parties agree that the matter should now be proceeded with by an arbitral Tribunal as per the transport agreement between the parties. Both the parties agree that both the parties should be allowed to raise all such plea as are available to them in law. If the matters are proceeded before the Arbitral Tribunal, now both the parties agree that

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the writ appeals could be disposed of as infructuous. In that view, the writ appeals are declared as infructuous and are disposed of as such."

On 21.1.2004, the respondent filed Contempt Petition No.53 of 2004 alleging violation of the interim order of stay dated 5.9.2003 in O.A.No.724 of 2003. In reply to such contempt petition, the present appellant narrated the developments from stage to stage. In such reply it was also indicated that the Corporation had intimated about the list of tank lorries blacklisted to all other companies as per the existing convention and after receipt of the said notice, such companies were also intimated accordingly. It was also intimated that by the time the order of stay was served, the contract period had come to an end in respect of two tank lorries by 31.8.2003 and in respect of other tank lorries by 31.10.2003. It was specifically stated that as the order was not communicated prior to 31.10.2003, the respondent could not comply with the order, and, therefore, had not violated the order of this court.

The applicant/respondent had filed a rejoinder stating that for a period of five months they were kept out of work and the said act of the respondent was not correct. It was further indicated that in respect of other tanker owners, their contract had been extended on adhoc basis and the petitioner was also entitled to similar facility, but the same had been denied by the Corporation.

A further reply affidavit was also filed on behalf of the respondent / appellant.

The contempt petition was taken up for hearing on 20.6.2004 and was disposed of on 29.6.2004. After noticing the contentions raised by both the parties, the learned single Judge closed the contempt petition with the following observations :-

> "5. Though this court can punish the respondent, as provided under section 12 of the Contempt of Courts Act for violating the orders, if any, I do not find any wilfulness and deliberate violation of the order of this court. By taking into consideration the submissions made by the respondent in this case, it also appears to be true, I do not propose to give a finding on that aspect. But, however, the respondent is not entitled to cause loss to the petitioner, when its contract period was upto 31-10-2003.
>
> 6. The fact that the respondent has not given the contract to the petitioner from 31-5-2003 to 31-10-2003 for 9 tanker lorries is not in dispute. The petitioner has further submitted that they have invested huge amount by availing credit facilities from various financial institutions for the purchaser of tanker lorries and entered into contract

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with the respondent and as the respondent has not given the work, the entire operation has come to a standstill and the petitioner is unable to utilise the vehicles for any other purpose, as they are purchased only for the purpose of transportation of petroleum products for the Corporation. It is also submitted that the said tanker lorries cannot be utilised for any other purpose also, as they were designed only for transportation of petroleum products and thereby they have incurred huge loss.

7. Taking into consideration the inconvenience caused to the petitioner and also the incompatibility expressed by the respondent, instead of punishing the respondent, I feel that the following directions would meet the ends of justice.

i) The respondent is hereby directed to give contract work, i.e. transporting the petroleum products to the petitioner, for 6 tanker lorries only, which they have been giving to the petitioner prior to 31-5-2003, for a period of 5 months, commencing from 15-7-2004.

ii) Awarding of contract for further period beyond 5 months, as it is said to have been given to the other tanker lorry owners, may also be considered to the petitioner also."

(Emphasis added)

3. The present appeal has been filed invoking Clause 15 of the Letters Patent.

4. A preliminary objection has been raised on behalf of the present respondent regarding maintainability of the appeal. It has been submitted by him that under Section 19 of the Contempt of Courts Act an appeal can be filed against the order convicting/punishing a person under the Contempt of Courts Act and since in the present case the present appellant neither been convicted nor had been punished, the appeal under Section 19 cannot be filed. It is further submitted that the Contempt of Courts Act is a special statute containing specific provisions regarding filing of appeal and if the order passed is not appealable in terms of Section 19, no such appeal can be filed invoking Clause 15 of the Letters Patent. Learned counsel for the respondent has placed reliance upon the decision of the Supreme Court reported in (2004) 11 SCC 672 (P.S. SATHAPPAN (DEAD) BY LRS. v. ANDHRA BANK LTD. AND OTHERS) in support of his contention.

5. Learned counsel for the appellant has submitted that the aforesaid decision of the Supreme Court does not have the effect of taking away the jurisdiction of an appeal under Clause 15 of the Letters Patent. It has been submitted by him that since the Court had found that contempt had not been committed, contempt petition was closed. However,

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while passing such order, the court had passed order, as contained in paragraph 7 of such order which has already been extracted, which prejudicially affects the right of the appellant, therefore, the appeal is maintainable under Clause 15 of the Letters Patent. In support of such submission, he has placed reliance upon the Division Bench decision of this Court reported in 1993-2-LW 225 (R. RAJAGOPAL v. M.P. CHELLAMUTHU & 3 OTHERS).

6. The relevant portion of section 19 of the Contempt of Courts Act, 1971 is as follows :-

> "19. Appeals. - (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt -
>
> (a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;
>
> . . . "

7. Clause 15 of the Letters Patent of the Madras High Court is as follows :-

> "15. Appeal from the Courts or Original Jurisdiction to the High Court in its appellate jurisdiction – And We do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of the superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Sec.108 of the Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of one judge of the said High Court or one Judge of any Division Court, pursuant to Sec.108 of the Government of India Act made (on or after the 1st day of February, 1929), in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us. Our Heirs of Successors in Our or Their Privy Council as hereinafter provided."

8. Learned counsel appearing for the respondent has placed

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reliance upon paragraph 148 of the decision in (2004)11 SCC 672 (cited supra), which according to the learned counsel for the respondent, summed up the conclusion in the said decision. In paragraph 148,it has been stated :

"148. The upshot of our decision would be:

(1) Finality clause contained in a statute, unless attached to an order passed in appeal, would not take away the right of appeal expressly provided for under the special statute.

(2) Letters Patent being a subordinate legislation has the force of law but the same is subject to an Act of Parliament.

(3) If an appeal is maintainable under sub-section (1) of Section 104 of the Code, no further appeal therefrom would be maintainable in terms of sub-section (2) thereof.

(4) A right of appeal being creature of a statute, it may provide for a limited right of appeal or limiting the applicability thereof.

(5) Clause 15 of the Letters Patent cannot override the bar created under Section 104 of the Code. Section 104(1) of the Code must be read with sub-section (2) of Section 104; and by reason thereof saving clause in relation to the Letters Patent would not be attracted. An attempt should be made to uphold a right of appeal only on harmonious construction of Sections 4, 104 and other provisions of the Code.

(6) However, when an appeal is provided for under a special Act, Section 104 of the Code shall have no application in relation thereto as it merely recognises such right but does not provide for a right of appeal.

(7) If a higher status is given to a Letters Patent over a law passed by Parliament including the Code of Civil Procedure, the same would run contrary to the history of the Letters Patent as also the parliamentary Acts.

(8) The judgment of this Court must be read as a whole and the ratio therefrom is required to be culled out from reading the same in its entirety and not only a part of it."

9. In our opinion, the aforesaid submission made by the counsel for the respondent, is not correct. The conclusion, as summarised in paragraph 148 of the judgment, reflects merely the minority view expressed by S.B. Sinha, J for himself and for N. Santosh Hegde, J. A

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careful reading of the entire decision clearly indicate that the conclusion, as per paragraph 148, obviously is not the conclusion of the majority opinion. The majority opinion is contained in paragraphs 1 to 35, whereas the minority view is reflected in paragraphs 36 to 150 and the order of the Court is contained in paragraph 151, which is to the following effect:-

> "151. In view of the majority judgment, the order of the High Court is set aside and these appeals are allowed with no order as to costs. The matters are remitted back to the High Court for decision on merits."

10. The minority view can be of no assistance. On the other hand, it was observed in the majority decision as follows :-

> " 32. ... Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure Code is a general law applicable to all courts. It is well-settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between the Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 of the Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 CPC only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100-A.
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> ...
>
> 34. We find ourselves in respectful agreement with the reasoning of this Court in the aforesaid decision. The same reasoning would apply in respect of the submission that if it is held that Section 104(2) did not bar a letters patent appeal an anomalous situation would arise inasmuch as if the matter were to come to the High Court a further appeal would be permitted but if it went to the District Court a further appeal would not lie. An appeal is a creature of a statute. If a statute permits an appeal, it will lie. If a statute does not permit an appeal, it will not lie. Thus, for example, in cases under the Land Acquisition Act, the Guardians and Wards Act and the Succession Act, a further appeal is permitted whilst under the Arbitration Act a further appeal is barred. Thus different statutes have differing provisions in respect of appeals. There is nothing anomalous in that. A District Court cannot be compared to a High Court which has special powers by virtue of Letters Patent. The

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> District Court does not get a right to entertain a further appeal as it does not have "any law for the time being in force" which permits such an appeal. In any event we find no provisions which permit a larger Bench of the District Court to sit in appeal against an order passed by a smaller bench of that Court. Yet in the High Court even, under Section 104 read with order 43 Rule 1 CPC, a larger Bench can sit in appeal against an order of a Single Judge. Section 104 itself contemplates different rights of appeals. appeals saved by Section 104(1) can be filed. Those not saved will be barred by Section 104(2). We see nothing anomalous in such a situation. Consequently the plea of discrimination urged before us must be rejected."

11. In our opinion, there is nothing in the majority view which in any way postulates that the appeal under Clause 15 of the Letters Patent would be barred merely because the impugned order in the contempt petition is not appealable under Section 19 of the Contempt of Courts Act.

12. On the other hand it seems that the question as to whether such appeal would be maintainable has been directly raised and decided in several decisions of this Court.

13. The Division Bench of this Court by the judgment dated 14.8.1990 in Vidya Charan Shukla V. Tamil Nadu Olympic Association and another (C.A.No.5 of 1990 and Letters Patent Appeal No.123 of 1990) while holding that an appeal under Cl.15 of Letters Patent would lie against any order or decision passed in exercise of the contempt jurisdiction of the High Court provided such an order or decision is a 'judgment' and satisfied the other requirements of Cl.15 of the Letters Patent, has observed as follows :-

> "Various judgments, where recourse to an appeal under the Letters Patent has not been permitted, dealt with cases where the Act provided an express prohibition or exclusion of an appeal under any other law. That was the petition in Union of India V. Mohindra Supply Co. AIR 1962 S.C. 256 which concerned with the provisions contained in S.39(2) of the Arbitration Act, and A.I.R. 1965 S.C. 1442 dealing with the Delhi Rent Control Act. Section 100A of the Code of Civil Procedure is again one of such instances where recourse to the Letters Patent cannot be had. Since, in our opinion Section 19(1) of the Act cannot be construed to be destructive of the valuable right of an appeal granted by Cl.15 of the Letters Patent and there is no provision contained in the Contempt of Courts Act alerogating or excluding the provisions of Cl.15 of the

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Letters Patent, we hold that except to the extent of the occupied field covered by Section 19(1) of the Act, an appeal under Cl.15 of the Letters Patent would lie against any order or decision passed in exercise of the contempt jurisdiction of the High Court, provided such an order or decision is a 'judgment' and satisfied the other conditions laid down in Cl.15 of the Letters Patent and does not fall in any of the excluded categories. We therefore, overrule the preliminary objection relating to the non-maintainability of the appeal under Cl.15 of the Letters Patent on the facts of the instant case."

14. The aforesaid decision was followed in 1993-2-LW 225 (cited supra), wherein it was observed :-

" We are in entire agreement with the above view expressed by the Division Bench of this Court in Vidya Charan Shukla V. Tamil Nadu Olympic Association and another (C.A.No.5 of 1990 and Letters Patent Appeal No.123 of 1990). Inasmuch as by the order under appeal, the learned Single Judge has declared that the first respondent is entitled to quarry sand in the area in question for a period of 3½ months and directed respondents 2 to 4 to permit the first respondent, to quarry sand for a period of 3½ months from 1.5.1993. we are inclined to hold that such an order is a 'Judgment' for the purpose of clause 15 of the Letters Patent and that the order under appeal satisfies the conditions prescribed in Cl.15 of the Letters Patent. In these circumstances, we have no hesitation in holding that the present appeal is maintainable under Cl.15 of the Letters Patent."

15. In our opinion, the effect of the aforesaid decisions have not been shaken in any subsequent decision of the Supreme Court or of the Madras High Court. On the other hand, the observations made by the Supreme Court in (1996) 6 SCC 291 (J.S. PARIHAR v. GANPAT DUGGAR AND OTHERS) in paragraphs 4 and 6 supports the views expressed by this Court.

16. In the above view of the matter, we are of the opinion that the present appeal is maintainable. It is therefore not necessary to consider the alternative submission made by the counsel for the appellant relying upon a Division Bench decision of the Calcutta High Court reported in 1997 CRI.L.J. 864 (HOOGHLY DISTRICT CENTRAL CO-OPERATIVE BANK LTD., v. ANOJ KUMAR ROY) that such an order is even appealable under Section 19 of the Contempt of Courts Act.

17. Once it is held that the appeal is maintainable, stage is now set to consider the merits of the contentions raised by the counsels

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for either parties in the present appeal.

18. Learned counsel for the appellant has made the following submissions :-

(1) The learned single Judge having held that there was no wilful and deliberate violation of the order of this Court and directed that the contempt petition is to be closed, should not have travelled beyond the scope of the contempt petition by issuing several directions affecting the right of the parties.

(2) In alternative it is submitted by him that even assuming that such directions could have been given, in the peculiar facts and circumstances of the present case, when the validity of the suspension order has been upheld in W.P.No.17962 and 17966 of 2003 and W.A.Nos.3797 & 3798 of 2003 had been dismissed, an order of blacklisting had been passed, validity of which was sought to be adjudicated in the arbitration proceedings, no such directions should have been issued.

19. Learned counsel appearing for the respondent on the other hand submitted that even though the contempt proceedings had been closed, the learned single Judge has passed the order in the interest of justice keeping in view the relevant facts and circumstances, and, therefore, such discretionary order does not call for any interference in appeal.

20. Learned counsel for the appellant has relied upon the decision of the Supreme Court reported in (1996) 6 SCC 291 (cited supra). In the said decision it was observed:-

> "6. The question then is whether the Division Bench was right in setting aside the direction issued by the leaned Single Judge to redraw the seniority list. It is contended by Mr.S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the

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court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or mayor may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings. a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench." (Emphasis added)

21. In (1997) 9 SCC 640 (STATE OF J & K v. SAYEED ZAFFAR MEHDI), relied upon by the appellant, it was observed as follows :-

"3. It is true that by the judgment delivered in Writ Petition No.169 of 1984 the Court directed that the petitioner should be deemed to be in continuous service with all consequential benefits as admissible under the Rules. It was further stated that if any action is proposed to be taken on him for alleged overstaying on leave, it shall be taken in accordance with the principles of law and of natural justice after making proper inquiry in the matter under the Rules. It is true that this order not having been carried in appeal became final. That, however, does not mean that the respondent when refused promotion can move the contempt application in the same matter and seek the court's order for granting him promotion. The scope of the original writ petition was limited and did not include matters in regard to future promotions. In the contempt application it was not open to the court to enlarge the scope of the original petition and also direct promotion. It is necessary to impress upon the High Court that contempt being a quasi-criminal matter, care should be taken to see that the scope of the original petition is not enlarged while making orders in contempt matters. The proper course for the respondent was to challenge the decision of the Government refusing to grant him promotion and examine the same in accordance with law. We, therefore, set aside the impugned order dated 30-11-1994 as well as the order of the Division

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> Bench dated 11-10-1996 and hold that the contempt application was misconceived and not competent. However, this will not preclude the respondent from questioning the refusal to grant promotion through proper process, if so advised. The appeal will stand so disposed of with no order as to costs."
> (Emphasis added)

22. Mr.N.G.R. Prasad, learned counsel appearing for the respondent, on the other hand has placed reliance upon some decisions in support of his contention that even in a contempt proceeding, the Court can issue appropriate directions, in the interest of justice.

23. The first and foremost decision relied upon by him is reported in A.I.R. 1991 SC 1171 (R.M. RAMAUL v. THE STATE OF HIMACHAL PRADESH AND OTHERS). In the said decision, the petitioner before the Supreme Court had filed the complaint of contempt alleging that the respondent despite the specific directions in the order dated 2.12.1988 in C.A.No.6144 of 1983 for restoration of complainant's seniority in service over and above two other officers, the said Corporation had resorted to hair-splitting technicalities in order to deny to the complainant the benefit of the order of the Court. The Corporation while giving promotion to the complainant did not give any monetary benefit for the period and observed that such promotion was a mere notional promotion. The Supreme Court observed :-

> "2. In our view complainant's grievance is a legitimate one. Though there was no specific direction in the order of this Court to consider complainant's case for promotion with effect from 26-5-1982 such a relief was implicit in the reasoning of the order. Indeed, the Corporation in convening the D.P.C. and reviewing the promotions and granting the notional promotion to the complainant for the period between 28-5-1982 to 3-9-1986, had virtually conceded this position. The withholding of the monetary benefits in respect of this period is inconsistent with what was decided in the judgment and what complainant was clearly entitled to. Since there was no specific direction in this behalf in the order, technically, there may be no case for punishment for contempt; but we make it clear that the promotion for the period from 28-5-1982 to 3-9-1986 should be accompanied by the monetary benefits. If a specific direction is necessary we issue it here and now. The appropriate monetary benefits shall be granted within 2 months from today." (Emphasis added)

24. We do not think that the observations made in the aforesaid Supreme Court case can be understood to lay down a general principle that in every case, the Court, while deciding a contempt matter, can travel beyond the scope of the contempt petition and grant relief, which could be decided in any other appropriate proceedings. A mere perusal of the

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observations made by the Supreme Court makes it clear that since there was no specific direction in the order of the Supreme Court, even though such direction was considered to be implicit, the Supreme Court issued such specific direction. In other words, the direction issued by the Supreme Court in the contempt proceedings was the natural outcome of the earlier order passed by the Supreme Court and no new material or aspect was required to be considered.

25. Learned counsel has also placed reliance upon the decision reported in A.I.R. 1996 SC 2005 (DELHI DEVELOPMENT AUTHORITY v. SKIPPER CONSTRUCTION COMPANY (P) LTD. AND ANOTHER). The Supreme Court in the said decision purported to exercise jurisdiction under Article 129 and 142 of the Constitution of India. As a matter of fact, the Supreme Court had found that the contemnor was guilty of contempt of the order of the Supreme Court and, while considering the question of punishment, issued several directions. It is obvious that the Supreme Court was passing ancillary orders. We do not think the ratio of the aforesaid decision can at all be made applicable to the facts of the present case.

26. The Division Bench decision of Andhra Pradesh High Court reported in 2001 CRI.L.J. 2253 (SMT.G. KALAVATHI v. C. ANAND RAO AND OTHERS) is also equally inapplicable to the facts of the present case. In the said case, the Division Bench categorically found that there was disobedience of the orders passed by the High Court and as some of the respondents had retired from service or had been transferred, the Court found that no purpose would be served by punishing such persons. On the other hand, the Division Bench directed such respondents to pay compensation. It is, therefore, obvious that the Court after having come to the conclusion that the respondents were guilty of contempt, was passing incidental or ancillary orders.

27. It is true that in some cases the court while dealing with a contempt petition does not come to any categorical conclusion regarding the allegation relating to contempt and yet issues certain incidental directions more or less clarifying the matter, particularly, with a view to avoid any further litigation. In the present case, it is not necessary to decide finally as to whether any such incidental or clarificatory directions can be issued while disposing of a contempt petition because, in our opinion, even assuming that this could be done particularly with a view to avoid any protracted litigation, in the present case, such directions should not have been issued. The directions issued do not appear to be any incidental or clarificatory directions, but independent positive directions, which are not envisaged within the limited scope of the controversy which was before the learned single Judge in the contempt petition. In fact the order seems to be the trapping of the final order in O.A.No.724 of 2003 itself, although only the contempt petition was required to be considered. The learned single Judge while deciding the matter under Section 9 of the Arbitration and Conciliation Act has issued the directions without any discussion

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regarding various aspects involved. In such view of the matter, the order passed by the learned single Judge cannot be sustained and the same is hereby set aside.

28. It is obvious that O.A.No.724 of 2003 is still pending. Since the contempt petition has been closed, the questions raised in O.A.No.724 of 2003 are only required to be considered by the appropriate court. Since such matter is to be decided on merits, it would not be proper on our part to consider the second contention raised by the appellant on merits.

29. The appeal is accordingly allowed and the impugned order passed by the learned single Judge in issuing various directions, as contained in paragraph 7 of the order, is set aside. Consequently, the connected miscellaneous petitions are closed. There would be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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